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GOVERNMENT OF SIKKIM
LAW DEPARTMENT
GANGTOK.

No. 8/LD/1995. Dated: Gangtok, the 30th October, 1995.

NOTIFICATION

The following Act of the Sikkim Legislative Assembly Secretariat having received the assent of the Governor on 11th day of October, 1995 is hereby published for general information:—

THE SIKKIM CLINICAL ESTABLISHMENTS (LICENSING AND REGISTRATION) ACT, 1995.
(ACT NO. 8 OF 1995)

ARRANGEMENT OF SECTIONS :-

1. Short title, extent, commencement and application.
2. Definitions
3. Constitution of a licensing and Registering Authority.
4. Jurisdiction and quorum.
5. Powers, duties and functions of the Authority.
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7. Application for licence and for registration.
8. Renewal of a licence and certificate of registration.
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17. Chairman, Member of the authority and officers and persons to be public servants.
18. Power to remove difficulties.
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THE SIKKIM CLINICAL ESTABLISHMENTS (LICENSING AND REGISTRATION) ACT, 1995.

ACT NO. 8 OF 1995

AN ACT

to provide for regulating the setting up of private hospitals, nursing homes and other centres catering to diagnostic, investigative and other health care services and for matters connected therewith.

Be it enacted by the Legislature of Sikkim as in the Forty-sixth Year of the Republic of India as follows:-

Short title, extent, commencement and application.

1. (1) This Act may be Called the Sikkim Clinical Establishments (Licensing and Registration) Act, 1995.

(2) It extends to the whole of Sikkin.

(3) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

(4) It shall apply to all clinical establishments other than clinical establishments set up by the Central Government or the Government of any State.

Definitions.

2. In this Act, unless the context otherwise requires,-

(a) "Authority" means the Sikkim Licensing and Registering Authority constituted under section 3;

(b) "Clinical establishment" means and includes-

(i) a general hospital, a maternity hospital and a dispensary;

(ii) an institution or centre by whatever name called where physically or mentally sick, injured or infirm persons are admitted either as in-patients or out-patients for treatment with or without the aid of operative procedures; and

(iii) a clinic catering to radiological, biological and other diagnostics or investigative services with the aid of laboratory or other medical equipments;

(c) "licence" means a licence referred to in section 7;

(d) "notification" means a notification published in the Official Gazette;

(e) "prescribed" means prescribed by rules made under the Act ;

(f) "State Government" means the Government of the State of Sikkim.

Constitution of a licensing and Registering Authority.

3. (1) The State Government may, by notification, constitute an authority to be called the Sikkim Clinical Establishments Licensing and Registering Authority consisting of the following persons, namely:-

(i) Director of Health and Family Welfare, Govrnment of Sikkim.	- Chairman
(ii) Licensing Authority under the Drugs and Cosmetics Act, 1940, Health and Family Welfare, Government of Sikkim.	- Member
(iii) Two members from medical profession of the Government of Sikkim.	- Member
(iv) Joint Director, Health and Family Welfare, Government of Sikkim.	- Member-Secretary.

(2) The Authority may, if it considers necessary, for dealing with any special issue before it, invite any person to attend any meeting but such person shall not be deemed to be a member of the Authority nor shall he have a voting right.

(3) No act or proceeding of the Authority shall be invalid on the ground merely of the existence of any vacancy or defect in the constitution of the Authority.

(4) The Authority shall have an office and all correspondence and orders emanating from the office of the Authority shall be authenticated under the signature at the Member Secretary.

(5) Notwithstanding anything contained in this Act, the State Government may, at any time, reconstitute the Authority or replace any member thereof.

Jurisdiction and quorum.

4. (1) The jurisdiction of the Authority shall extend over the entire State of Sikkim.

(2) The quorum for any meeting of the Authority shall be four including the Chairman.

Powers, duties and functions of the Authority.

5. Without derogation to any law for the time being in force and without prejudice to the generality of its powers and functions, the Authority shall-

(a) receive applications for grant of licence and for registration of clinical establishments;

(b) scrutinize the applications and call for further information or particulars from the applicants or from any other person or authority as may be required;

(c) consider the applications and pass orders;

and

(d) do such other things as are necessary or incidental for the purpose of this Act.

Restrictions in setting up clinical establishments.

6. On and from the date of commencement of this Act, no person shall set up any clinical establishment except under a valid licence granted by the Authority and no clinical establishment shall run without it having been registered in accordance with the provisions of this Act;

Provided that in the case of a clinical establishment in existence immediately before the date of commencement of this Act, the person who has set it up or otherwise is the proprietor or owner of such a clinical establishment shall, within a period of three months therefrom, apply to the Authority for a licence and for registration of the clinical establishment.

Explanation: For the purpose of this section 'person' includes a body, group or association of individuals, an organisation, a firm or society(whether registered or not) or a company registered under the law for the time being in force in the State of Sikkim.

Application for licence and for registration.

7. An application for grant of a licence, and for registration of a clinical establishment shall be made in such form and manner as may be prescribed.

Renewal of a licence and certificate of registration.

8. The licence and the certificate of registration shall be renewed in such manner as may be prescribed.

Processing of application.

9. On receipt of an application, the Authority may, if it is satisfied after causing such enquiry as may be necessary to be made and after following the criteria as may be prescribed, grant a licence or register a clinical establishment, as the case may be, or refuse, for reasons to be recorded in writing, to grant a licence or to register clinical establishment:

Provided that no order refusing to grant a licence or to register a clinical establishment shall be passed unless the applicant has been given an opportunity of being heard.

Directions.

10. Authority may, from time to time, give directions in regard to matters pertaining to clinical establishments and the licencee as also the person referred to in the proviso to section 6 shall comply with such directions.

Inspection.

11. The Authority may, from time to time, cause inspections of clinical establishments and the record kept therein to satisfy itself that the clinical establishment is run in accordance with terms and conditions of the licence and that its directions are complied with and the licensee and the officer-in-charge of the clinical establishment, by whatever name called, shall afford all reasonable opportunity to the Authority or to any person deputed by it to conduct the inspection and shall furnish all information as may be called for.

Cancellation or suspension of a licence.

12. (1) If the Authority is satisfied that a licensee has violated any of the terms and conditions of the licence or any of the directions it has given or has contravened any of the provisions of this Act or the rule made thereunder, the Authority may order cancellation or suspension of the licence for such period as it may think fit and on such cancellation the certificate of registration shall stand withdrawn.

Provided that before a licence is cancelled that licence shall be given an opportunity to be heard.

(2) On the cancellation or suspension of the licence under sub-section (1) no person shall be freshly admitted in the clinical establishment either as an in-patient or an out-patient:

Provided that a person already admitted in a clinical establishment before the licence is cancelled, or suspended as the case may be, shall continue to be treated until he is discharged and on the discharge of the last of such persons the clinical establishment shall be closed down.

Appeals.

13. (1) Any person aggrieved by an order of the Authority refusing to grant a licence or to register a clinical establishment under section 9 or cancelling or suspending a licence under section 12, may prefer an appeal to the Appellate Authority consisting of the Secretary to the Government of Sikkim in the Health and Family welfare Department and two other experts in the field of medical science to be nominated by the State Government within such period as may be prescribed.

(2) The Appellate Authority shall, after considering the appeal and, if necssary, after hearing the aggrieved person, pass orders and its orders shall be final and binding.

Offences and penalties.

14. Whoever contravenes any of the provisions of this Act or the rules framed thereunder shall be guilty of an offence and in addition to his licence being cancelled or suspended shall be punishable for-

(a) a major offence, with a fine which shall not be less than twenty thousand rupees but which may extend upto one lakh rupees and in the case of a continuing contravention with an additional fine which may extend upto one thousand rupees for every day the contravention continues, and

(b) a minor offence, with a fine which shall not be less than five hundred rupees but which may extend upto two thousand rupees and in the case of a continuing contravention with an additional fine which may extend upto fifty rupees for every day contravention continues.

Explanation: 'Major offence' and 'minor offence' shall have the meanings as may be prescribed.

Offence by a Company.

15. Where an offence has been committed by a company every person who at the time the offence was committed were directly in charge of or were responsible to the company for the conduct of its business shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Explanation: For the purpose of this section 'company' includes a firm, society, association or group of persons by whatever name called.

Taking cognizance of any offence.

16. No court shall take cognizance of any offence punishable under this Act except on a complaint made by the Authority or by an officer or person authorised by it in this behalf.

Chairman, member of the Authority and persons to be public servants.

17. The Chairman and every member of the Authority and every officer or person exercising his functions on its behalf shall be a public servant within the meaning of section 21 of the Indian Penal Code, 1860. 45 of 1860.

Power to remove difficulties.

18. If any difficulty arises in giving effect to the provisions of this Act, the State Government may take such steps or issue such orders not inconsistent with the provisions of the Act as may appear to it to be necessary or expedient for the purpose of removing such difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date of commencement of this Act.

Power to make rules.

19. (1) The State Government may, by notification and subject to the condition of previous publication, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely :—

(a) the principles and criteria for granting a licence or for registration of a clinical establishment;

(b) the terms and conditions of a licence;

(c) the form of application for a licence and for registration of a clinical establishment;

(d) the form of the periodical returns and statistics to be submitted by the licensee to the Authority;

(e) the mode of holding meeting and the conduct of business by the Authority;

(f) the fees payable for applying for a licence and for registration of a clinical establishment and for renewal of the same;

and

(g) any other matters which are to be and may be prescribed.

By Order of the Governor,

B.R. PRADHAN,
Secretary to the Govt. of Sikkim,
Law Department.
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